

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

HEILIG-MEYERS FURNITURE
COMPANY, Inc., a foreign corporation,

Respondent

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by HEILIG-MEYERS FURNITURE COMPANY, INC. of Richmond, Virginia ("Respondent"), to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee ("Attorney General") and to MARK WILLIAMS, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General have conducted an investigation of specific business practices of Respondent. These practices included alleged unfair and deceptive debt collection practices. Specifically, one of Respondent's former employees sent a collection letter, purportedly from a credit manager, to a consumer with a hand written note threatening the filing of criminal charges if the consumer did not respond. The particular consumer did not pay any monies to the Respondent as a result of the threat of criminal prosecution. As a result of the investigation, the Division and the Attorney General have determined that the conduct of the Respondent as described herein violated the Tennessee

Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.* (the "Act").

B. By entering into this Assurance, the Respondent does not admit any wrongdoing. By engaging in the conduct described in paragraph A, Respondent's former employee violated Respondent's debt collection policies. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of the Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Respondent desires to give this Assurance of compliance, and the Attorney General desires to accept it in order to conclude the State's investigation and avoid the costs and expenses of litigation.

D. By way of general background and information, Heilig-Meyers Furniture Company, Inc. ("Heilig-Meyers"), is a retail furniture business that offers customers installment contracts as a means of financing purchases. Heilig-Meyers is not required to and does not send out regular statements or reminders of payments. When a customer fails to make timely payments, Heilig-Meyers sends out one or more computer generated notices and may attempt to contact the customer by phone to arrange for payment and/or repossession of the secured merchandise. The computer generated notices are form letters that Heilig-Meyers provides to each of its stores. Heilig Meyers, in limited situations of continued delinquency, sends employees to consumers' homes to initiate discussions about the debt and attempt collection of past due accounts.

NOW, THEREFORE, acting pursuant to Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter herein and over the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, clarification, modification or execution of this Assurance and Agreed Order, including the enforcement of compliance therewith and penalties for violation thereof. Pursuant to Tenn. Code Ann. § 47-18-107(d), the State may re-open this Assurance at any time. Respondent acknowledges and agrees that it is within the court's discretion to order the Respondent to pay all court costs and reasonable attorneys' fees associated with any future successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

2. VENUE

2.1 Pursuant to TENN. CODE ANN. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

3. PARTIES

3.1 Respondent warrants and represents that it is the proper party to this Assurance. Respondent further acknowledges that it understands that the State expressly relies on this representation and warranty, and that if it is inaccurate, may move to vacate or set aside this Assurance, or may request that Respondent be held in contempt.

3.2 This Assurance shall apply to Respondent, its successors, and assigns, and to any officer or employee of Respondent, wherever located, engaging in or with responsibility for Respondent's debt collection activities in the State of Tennessee.

4. BUSINESS PRACTICES

ACCORDINGLY, it is hereby agreed that upon approval of the Court, Respondent shall be permanently enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Threatening criminal action against a consumer in an attempt to collect a debt. Nothing in this paragraph shall restrict Respondent's right to file a complaint with appropriate law enforcement authorities for alleged criminal law violations. Further, nothing in this paragraph shall restrict the Respondent's right to obtain restitution in any criminal proceeding initiated by a district attorney general.

4.2 Sending or delivering any debt collection letters or notices to customers bearing a business or employment title that is not the business or employment title of the individual who signed the letter. Without limiting the scope of this provision, in the event an individual signs a letter on behalf of another individual and in the other individual's name, the signor shall be required to have authorization to do so from the person whose name is signed and in such instances both individuals shall be responsible for the content of any such letters.

5. RESTITUTION

5.1 Respondent agrees to refund to the consumer identified by the State any amount paid after receiving the letter from the former employee as described in paragraph A. Further, Respondent will cancel and forever forgive any outstanding credit balance remaining after the consumer received a threat of criminal prosecution. Said consumer shall have the right to retain the goods. Further, Respondent shall not pursue the repossession of any of the merchandise purchased by the particular consumer. Respondent agrees to correct any and all negative entries made on the particular consumer's credit report or history after June 9, 1998, and provide the consumer with notice of the correction.

5.2 Respondent represents and warrants that it has used reasonable efforts to determine that no other Tennessee consumers or persons were threatened with criminal prosecution in connection with debt collection activities prior to the date of entry of the agreed order in this matter. As a result of this representation, the State assumes that no other consumers are due restitution. Respondent acknowledges and understands that the State expressly relies on this representation and warranty and if it is false, inaccurate or misleading, the State may move to vacate or set aside this Assurance or request Respondent

be held in contempt.

5.3 Respondent is responsible for all costs associated with the restitution process.

5.4 Within ten (10) days of entry of this Assurance, Respondent agrees to provide the Attorney General with written verification that the restitution required by paragraph 5.1 has been provided to the particular consumer. In that verification, Respondent shall provide the total amount of any debt canceled or any refund paid.

6. PAYMENT TO THE STATE OF TENNESSEE

6.1 Respondent shall pay the sum of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) to the State of Tennessee to the General Fund. This payment shall be made by a check, backed by good and sufficient funds, payable to the "State of Tennessee - General Fund" on the date of execution of this Assurance.

7. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

7.1 Pursuant to Tenn. Code Ann. § 47-18-108(b)(4), Respondent shall pay the sum of Five Thousand and 00/100 Dollars (\$5,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. This payment shall be made by providing a check, backed by good and sufficient funds, made payable to the AState of Tennessee - Attorney General@ to his designated representative on the day of execution of this Assurance.

8. MONITORING FOR COMPLIANCE

8.1 Upon request, and subject to any properly asserted legal privilege, Respondent agrees to provide books, records and/or documents to the State at any time, and further, to informally, or formally under oath, provide testimony and/or other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within twenty (20) business days after the request, or as otherwise mutually agreeable in writing, at the Office of the Attorney General or at such other location within the State of Tennessee as is agreeable to Respondent and the Attorney General or his designated representative. This section shall in no way limit the State's right to obtain documents, information or testimony pursuant to any federal or state law, regulation or rule.

9. PRIVATE RIGHT OF ACTION

9.1 Nothing in this Assurance shall be construed to affect any private right of action that a consumer may hold against Respondent.

10. PENALTY FOR FAILURE TO COMPLY

10.1 Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondent acknowledges and understands that upon execution and filing of this Assurance, unless same has been rescinded by agreement of the parties or ordered by a court for good cause, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

10.2 Pursuant to Tenn. Code Ann. § 47-18-107(f) Respondent acknowledges and understands that any knowing violation of the terms of this Assurance and Agreed Order is punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation as set forth in the Act, in addition to any other appropriate sanctions, including, but not limited to, contempt sanctions and the imposition of reasonable attorneys' fees and civil penalties. Respondent agrees it is within the court's discretion to order it to pay all court costs and reasonable attorneys' fees associated with any successful petitions to enforce this Assurance and Order against the Respondent.

11. REPRESENTATIONS AND WARRANTIES

11.1 The Respondent acknowledges that it is obligated to fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.*, including, but not limited to Tenn. Code Ann. §§ 47-18-104(a) and (b)(27), which prohibit any and all unfair and/or deceptive acts or practices.

11.2 The Respondent acknowledges that it is prohibited by state law from using any false, deceptive or misleading representations or means in connection with its debt collection activities in the State of Tennessee.

11.3 Respondent represents and warrants that it has used reasonable efforts to determine that the specific business practice described in paragraph A of this Assurance relating to a single employee and the referenced collection letter, has never occurred in any other instance other than the one giving rise to the execution of this Assurance.

11.4 The Respondent acknowledges to the State that it will conduct an investigation into any of its employees who have allegedly threatened a Tennessee consumer or person with criminal prosecution in connection with debt collection activities. Further, Respondent will take whatever reasonable action it deems appropriate to discipline, train or terminate the employment of said person. Respondent acknowledges that it has the option of self-reporting any violations and disciplinary actions taken to the Attorney General and Respondent has been strongly encouraged to do so by the State.

11.5 Respondent represents and warrants to the State that it will, consistent with its normal business practices and policies, conduct regular and periodic training sessions and reviews of proper debt collection procedures with all employees who engage in debt collection activities in the State of Tennessee.

11.6 Respondent represents and warrants that it will agree to include and enforce as part of Respondent's written policies and procedures to be implemented and followed by all of its retail stores who engage in debt collection from Tennessee consumers, a prohibition against threats of criminal prosecution onto any of Respondent's form debt collection notices and letters. Nothing in this paragraph shall restrict Respondent's right to file a complaint with appropriate law enforcement authorities for alleged criminal law violations. Further, nothing in this paragraph shall restrict the Respondent's right to obtain restitution in any criminal proceeding initiated by a district attorney general.

11.7 Respondent acknowledges that it understands that the State expressly relies on the acknowledgments and representations and warranties in section 11, and if they are false, inaccurate or misleading, the State may move to vacate or set aside this Assurance.

11.8 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office of the Division of Consumer Affairs to procure this Assurance.

11.9 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

11.10 Respondent shall not effect any change in its form of doing business or its organizational identity as a method of avoiding the terms and conditions set forth in this Assurance.

11.11 Neither Respondent nor anyone with authority acting on its behalf shall state and/or imply and/or cause to be stated or implied that the Attorney General, the Department of Commerce and Insurance, the Division, or any other governmental unit of the State of Tennessee has approved, sanctioned or authorized any practice, act or conduct of the Respondent.

11.12 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's business practices.

11.13 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its regional supervisors who engage in or have responsibility for debt collection in the State of Tennessee. Respondent shall also provide a synopsis and explanation of this Assurance to each of its store managers who shall distribute it to all employees engaged in debt collection in the State of Tennessee. The synopsis shall include a request that all employees report any incidents involving threatening a Tennessee consumer with criminal prosecution in debt collection to the their regional supervisor immediately. If, through the action described in this paragraph, Respondent becomes aware of any threats of criminal prosecution made in an attempt to collect a debt that were made prior to the entry of the agreed order in this matter, Respondent shall make restitution to the threatened consumer in a manner consistent with paragraph 5.1.

11.14 Heilig-Meyers Furniture Company, Inc. represents that it is the true legal name of the entity and is the proper party to enter into this Assurance and Agreed Order.

11.15 This Assurance and Agreed Order may only be enforced by the parties hereto.

11.16 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

11.17 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

11.18 This Assurance shall be binding and effective against Respondent upon both parties signing the Assurance.

11.19 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State and the people of the State of Tennessee. In addition, this Assurance shall not bar the State or any other governmental entity from enforcing other laws, regulations or rules against Respondent relating to any of Respondent's practices, including those alleged in this Assurance and the State's Petition, except insofar as this Assurance resolves the specific disputes between the Consumer Protection Division of the Attorney General's Office and the Respondent described in the State's Petition.

11.20 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

11.21 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for the purposes of any proceeding under the Internal Revenue Code or any state tax laws.

11.22 Upon approval of this Assurance by the Court, the Attorney General and the Division agree not to pursue any claims under the Tennessee Consumer Protection Act of 1977 relating to the facts set forth in paragraph A of this Assurance occurring prior to entry of this Assurance that they could commence under the Tennessee Consumer Protection Act of 1977. However, the State retains its right to set aside this Assurance as set forth herein and under state law.

12. COMPLIANCE WITH OTHER LAWS

12.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with any other state or federal law(s), regulation(s) or rule(s), nor shall any of the provisions of this Assurance and Order be deemed to be permission to engage in any acts or practices prohibited by

such law(s), regulation(s) or rule(s).

13. FILING OF ASSURANCE

13.1 Immediately upon the execution of this Assurance, the Attorney General or his designated representative shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which he may have to be heard in connection with judicial proceedings upon said Petition. Respondent agrees to pay all court costs of filing such Petition, Assurance and Agreed Order. The Assurance, annexed to the Agreed Order, is made a part of and is incorporated into the Agreed Order upon approval of the Court.

14. APPLICABILITY OF ASSURANCE TO RESPONDENT AND ITS SUCCESSORS

14.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to Respondent's activities engaged in within the State of Tennessee or directed to the State of Tennessee by Respondent and to each of its officers and successors, wherever located, engaged in or responsible for debt collection practices activities in the State of Tennessee or directed at the State of Tennessee.

15. NOTIFICATION TO STATE

15.1 Any notices required to be sent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State: Carolyn Smith
Assistant Attorney General
Office of the Attorney
General
Consumer Protection
Division
425 Fifth Avenue North, 2nd
Floor Nashville, TN 37243

For the Respondent:
Edward N. Boehm
Counsel for Respondent
Miller and Martin, LLP
Suite 1000 Volunteer Building
1 832 Georgia Avenue
Chattanooga, Tennessee 37402-2289

Jack H. Sniffin
Senior Vice President Government
Relations
Heilig-Meyers Furniture Company,
Inc.
2560 West Creek Parkway
Richmond, Virginia 23238

15.2 For five (5) years following execution of this Assurance, Respondent shall notify the Attorney General, in writing at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries or any other changes in Respondent's status that would prevent compliance with obligations arising out of this Assurance.

16. COSTS

16.1 All court costs associated with the filing of this Assurance shall be borne by Respondents. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116.